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IN THE

Supreme Court of the United States

OCTOBER TERM 1964

No. 352

GENERAL MOTORS CORPORATION,
Petitioner,
v.
DISTRICT OF COLUMBIA,
Respondent

MOTION OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
and
BRIEF OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., AS AMICUS CURIAE

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SUBJECT INDEX

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Automobile Manufacturers Association, Inc., respectfully moves this court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for the petitioner herein has been obtained, but the attorney for the respondent herein refused to consent to the filing of a brief by Automobile Manufacturers Association, Inc., as *amicus curiae*.

The applicant, Automobile Manufacturers Association, Inc., a non-profit trade association whose members manufacture and sell automotive vehicles in the United States, has an interest in this case in that several of its members have been assessed the franchise tax of the District of

Columbia. The assessed tax on these members is not being paid pending a final decision of the instant case, because their liability depends on a determination of the questions which are presented for decision in the instant case.

Automobile Manufacturers Association, Inc., believes that petitioner herein will be unable to give a full presentation of facts in the instant case. Automobile Manufacturers Association, Inc., is in possession of factual information relating to the impact of the challenged tax on the automobile industry. This information cannot be presented by petitioner, and it will be unknown to the Court unless presented by Automobile Manufacturers Association, Inc., as *amicus curiae*. It is desirable that the Court have these facts before them in considering the Petition for Writ of Certiorari filed herein by petitioner, because these facts demonstrate in part the scope of the issues and their importance both in the District of Columbia and nationally.

Respectfully submitted,

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THE ISSUE

The issue in this case is whether the District of Columbia has applied its franchise tax in a manner which violates the Commerce Clause (Art. 1, §8, cl. 3) and the Due Process Clause (Amend. V) of the United States Constitution. The District of Columbia Tax Court held that the tax was applied in an unconstitutional manner. The Court of Appeals for the District of Columbia Circuit reversed that decision. The *amicus curiae* believes that the Court of Appeals did not give proper consideration to the unfair manner in which the District apportions its tax and the actual double taxation which results from such apportionment.

INTEREST OF AMICUS CURIAE

Automobile Manufacturers Association, Inc., is a non-profit membership corporation organized under the laws of New York. The Association is composed of twelve members, who are the manufacturers of well over 90% of all passenger automobiles, trucks, and busses produced in the United States. The members are:

> American Motors Corporation, Checker Motors Corporation, Chrysler Corporation, Duplex Division of Warner Swasey Company, Ford Motor Company, General Motors Corporation, International Harvester Company, Kaiser Jeep Corporation, Mack Trucks, Inc., Studebaker Corporation, Walter Motor Truck Company, The White Motor Company.

All these members engage in interstate commerce. The goods of many members are shipped through interstate commerce into the District of Columbia. The members who ship goods into the District are faced with the same problem which General Motors has faced. They have been, or expect to be, assessed with the District of Columbia franchise tax. While they are willing to pay any tax which is measured by the activities fairly attributable to them within the District of Columbia, the present tax as interpreted by the District and by the majority of the Court of Appeals does not use such a measure.

General Motors argues that a three factor formula of apportionment would be fair in its case. It points out that a three factor formula is used in a number of states. The Court of Appeals held that a single factor formula, which was used by the District of Columbia in this case, is suffi-

cient. This Court by considering this case can instruct all taxing units that this single factor method of apportionment is unconstitutional. This will be an aid to all members of the *amicus*, whether or not they sell to District customers.

IMPORTANCE OF THE DECISION IN THIS CASE

The decision in this case should establish for taxing authorities the manner in which they may apportion their taxes. For states in which tax statutes do not provide for apportionment, it is necessary to apprise the state legislatures of the need for amendment to make their statutes constitutional. Because of the importance of interstate commerce in the economy of the country, the decision in this case should be made by the Supreme Court.

A second reason this *amicus* urges the Court to grant a petition for certiorari is that a number of its members will be directly affected by the final decision in this case, since they have been assessed the tax in the District of Columbia. They have not paid that tax because they, along with General Motors, have felt that the apportionment formula employed by the District is not fair.

The annual sales of members of the *amicus* have been in excess of $120,000,000 to customers within the District of Columbia. On the basis of the apportionment formula challenged in this suit, 100% of those sales are taxable in the District. Yet no member manufactures within the District. Only a few have offices or employees within the District. In some cases these members pay taxes measured by the same sales in other jurisdictions. Because of these facts the affected members believe that they should not be

taxed on a basis assigning 100% of their activities to the District of Columbia. Because of the minimal contacts of some members with the District, these members question whether the District has the power to tax them at all.

All persons engaged in interstate commerce are concerned with the threat that many states and local taxing units will adopt unfair apportionment formulas. The automotive industry is, of course, primarily interstate in character. Thus the annual gross receipts of the members of the *amicus curiae*, now in excess of $23,000,000,000, are to a large part subject to taxes in more than one state. If these states do not apportion their taxes fairly, then an undue burden will be placed upon the interstate commerce engaged in by these members.

ARGUMENT

While many of the complexities of today's society date from the Industrial Revolution in the nineteenth century, our complex political structure dates from the founding of the country. Because of the numerous and competing units of government which then existed, the framers of the Constitution took some pains to ensure that the varying claims of these units would not create chaos. One result of their efforts was the commerce clause.

The colonies had been commercial as well as agricultural states. Trading among themselves as well as with foreign countries was essential to the growth of the country. Therefore, the commerce clause was designed to protect this inter-state trade. It was against the interests of national development for one state to protect its own commerce by laying levies on goods arriving from other states. Likewise

it was wrong for a state to raise revenue by taxing the interstate commerce and not taxing commerce carried on within its borders.

On the other hand, this could not mean that interstate commerce should pay no taxes, leaving the burden of revenue entirely on sources within a state. Thus this Court has held that interstate commerce must pay its own way; it must return to a state payment fairly attributable to the services provided to it by that state. However, this has raised the difficult question of determining how much of the commerce is fairly attributable to one state.

Some states have sought to solve the problem by using formulas. By using such factors as capital, labor, and sales, an effort is made to apportion accurately and fairly to one state that part of the interstate business which occurred in that state. Other states and taxing units, however, use apportionment formulas which only seem to be fair. The District of Columbia is one such taxing unit.

A great deal of latitude must be left to local units on choosing the appropriate apportionment formula. However, there must also be limitations to prevent undue burdens on interstate commerce. The District of Columbia is primarily a consumer market. Therefore it is obvious that the greatest revenue will be achieved at the expense of interstate commerce if the only factor in the apportionment formula is sales. Since most capital and labor lie outside the District, nothing can be gained by including them in the formula.

This method of "fair" apportionment would be simple for other states to follow. States where manufacturing is done would consider only labor in their formula with perhaps some weight to property and none at all to sales. In those states where property is concentrated, that factor

would be weighted heavily. In this manner each state could tax interstate commerce to the hilt. Goods manufactured in one state, taxed on a formula giving 100% weight to labor, could be sold in another state where they are taxed on a formula giving 100% weight to sales.

Of course, the prime evil of this double taxation is that the local business which is carried on in intrastate commerce will only have to pay one tax. In this manner the protectionist policy of the states, and the desire to raise revenue at the least expense to their citizenry, returns. The danger sought to be corrected by the commerce clause once more threatens the growth of the country.

In such a situation it is proper for the Supreme Court to consider this case which presents a single factor apportionment formula. The case also contains proof that this formula imposed double taxation on General Motors. Thus the inequities of the case as well as the general need for guidance call for a decision from this Court. It is for these reasons that this *amicus curiae* urges the Court to grant a writ of certiorari in this case.

Respectfully submitted,

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